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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/777,978	02/12/2004	Stephen L. Manley	112056-0138U	7438
24267	7590	09/12/2006	EXAMINER	
CESARI AND MCKENNA, LLP 88 BLACK FALCON AVENUE BOSTON, MA 02210			LEROUX, ETIENNE PIERRE	
			ART UNIT	PAPER NUMBER
			2161	

DATE MAILED: 09/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/777,978

Applicant(s)

MANLEY, STEPHEN L.

Examiner

Etienne P. LeRoux

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 12 February 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 February 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Claim Objection

Claims 13-15 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Incorporation of Material

The incorporation of essential material in the specification by reference to an unpublished U.S. application, foreign application or patent, or to a publication is improper. Applicant is required to amend the disclosure to include the material incorporated by reference, if the material is relied upon to overcome any objection, rejection, or other requirement imposed by the Office. The amendment must be accompanied by a statement executed by the applicant, or a practitioner representing the applicant, stating that the material being inserted is the material previously incorporated by reference and that the amendment contains no new matter. 37 CFR 1.57(f).

The attempt to incorporate subject matter into this application by reference to a plurality of patent applications is ineffective because:

- (1) Applicant must specify a clear intent by using the root words “incorporate” and “reference”
- (2) Clearly identify the referenced patent, application or publication by serial number, title and filing date.

NOTE:

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Essential material may be incorporated by reference, but only by way of an incorporation by reference to a U.S. patent or U.S. patent application publication, which patent or patent application publication does not itself incorporate such essential material by reference. Refer 37 CFR 1.57

The later-filed application must be an application for a patent for an invention which is also disclosed in the prior application (the parent or original nonprovisional application or provisional application). The disclosure of the invention in the parent application and in the later-filed application must be sufficient to comply with the requirements of the first paragraph of 35 U.S.C. 112. See *Transco Products, Inc. v. Performance Contracting, Inc.*, 38 F.3d 551, 32 USPQ2d 1077 (Fed. Cir. 1994).

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the following must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

- (1) replication agent
- (2) plurality of standalone headers
- (3) the data set header

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet,

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even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Applicant is granted TWO months from the mailing date of this Office action to correct above deficiencies.

Specification

The abstract of the disclosure is objected to because it contains more than 150 words. Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

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Claim 1 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claim 1 recites “a plurality of standalone headers.” Standalone headers cannot be found in the specification.

Claim 1 recites “data set information.” Data set information cannot be found in the specification.

Claim 1 recites “the data set header.” Data set header cannot be found in the specification.

Claim 1 recites “a replication agent.” Replication agent cannot be found in the specification.

Claim 1 recites “an extended attribute field.” Extended attribute field cannot be found in the specification.

Claim 1 recites “an extended attribute.” Extended attribute cannot be found in the specification.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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Claim 1 recites “a plurality of standalone headers having discrete identifiers, each of the plurality of standalone headers being representative of a plurality of data stream characteristics.”

The metes and bounds of the present invention cannot be determined because:

- (1) it is unclear how many headers Applicant is claiming
- (2) it is unclear how many identifiers Applicant is claiming
- (3) it is unclear how an identifier represents a characteristic

Claim 1 recites “the data set information.” There is insufficient antecedent basis for “the data set information.”

Claim 1 recites “the data set header.” There is insufficient antecedent basis for the data set header.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-3, 5, 7, 9-12 and 16 are rejected under 35 U.S.C. 102(e) as being anticipated by Pub No US 2004/0022278 issued to Thomas et al(hereafter Thomas), as best examiner is able to ascertain.

Claims 1, 7, 10-12 and 16:

Thomas discloses:

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a destination system having a replica residing therein [Fig 1, 17b];

a source system having a replication agent executing thereon, the replication agent adapted to generate the data stream [Fig 1, 7b].

the data stream comprising of:

a plurality of standalone headers having discrete identifiers, each of the plurality of standalone headers being representative of a plurality of data stream characteristics [Figs 8-10, 16] ;

a data following header that follows, in the data stream, the plurality of standalone headers and that indicates that the data set information is following the data following header, the data set header including an extended attribute field that associates an extended attribute with the data set information [paragraphs 80, 108, 109].

Claim 2:

Thomas discloses wherein the plurality of standalone headers each include an indication of one of a plurality of specialized header types and at least some of the plurality of specialized header types are adapted for carrying directory inode data [paragraph 80]

Claim 3:

Thomas discloses wherein the data stream is adapted to carry source file system inode data and source file generation numbers [paragraph 80]

Claim 5:

Thomas discloses the extended attributes include ACLs and streams associated with a plurality of operating systems and system architectures [Fig 2, paragraph 67].

Claim 9:

Thomas discloses wherein the data following header includes offset and block number information with respect to the data set information that follows the data following header [paragraph 80].

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas as applied to claims 1,2 above, and further in view of Pub No US 2003/0066062 issued to Brannock et al (hereafter Brannock), as best examiner is able to ascertain.

Claim 4:

Thomas discloses the elements of the above referenced claims but does not disclose wherein one of the specialized header types comprises a deleted files type and the directory inode data comprises a list of deleted files on the source file system. Brannock discloses wherein one of the specialized header types comprises a deleted files type and the directory inode data comprises a list of deleted files on the source file system [Fig 2, 26 and paragraph 29]. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Thomas to include wherein one of the specialized header types comprises a deleted files type and the directory inode data comprises a list of deleted files on the source file system as taught by Brannock for the purpose of tracking which have been deleted.

Claims 6 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas as applied to claim 1 above, and further in view of Pub No 2001/0001877 issued to French et al (hereafter French), as best examiner is able to ascertain.

Claims 6, 8:

Thomas discloses the elements of the claimed referenced above but does not disclose wherein one of the plurality of standalone headers comprises an open file/undo header that instructs the destination system to revert to an earlier copy of a stored file identified by the open file/undo header. French discloses wherein one of the plurality of standalone headers comprises an open file/undo header that instructs the destination system to revert to an earlier copy of a stored file identified by the open file/undo header [paragraph 175]. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Thomas to include wherein one of the plurality of standalone headers comprises an open file/undo header that instructs the destination system to revert to an earlier copy of a stored file identified by the open file/undo header as taught by French for the purpose of reverting to a previous file version due to current unavailability of the most recent version of the file.

Regarding claims 17-39, examiner maintains that these claims can be rejected on a similar basis as claims 1-16.

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Etienne P. LeRoux whose telephone number is (571) 272-4022. The examiner can normally be reached on Monday through Friday, 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey Gaffin can be reached on (571) 272-4146. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Etienne LeRoux

9/8/2006

E P LeRoux
Primary Examiner